

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2639 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

K.N. PILLAI

Versus

STATE OF GUJARAT

Appearance:

MR PM RAVAL for Petitioners
M/S A & D for Respondent No. 1
Ms.Manisha Lavkumar Shah AGP for the State

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 28/04/2000

ORAL JUDGEMENT

#. By means of filing this petition under Article 226 of the Constitution, the petitioners who are directly recruited wireless operators have prayed to declare that

Gujarat Police Department(Conditions of Service relating to Wireless Operators and Head Wireless Operators) Examination Rules 1982 framed by the Government of Gujarat in exercise of the powers conferred by clause (b) of Section 5 of the Bombay Police Act 1951, are ultravires, Articles 14 and 16 of the Constitution. The petitioners have further prayed to direct the respondents to frame rules fixing quota for the purpose of promotion to the post of Police Wireless Inspectors and PSI in accordance with the strength of different cadres.

#. Recruitment to the post of Wireless Inspector is regulated by Rule 75 of Gujarat Police Manual. Appointment to the said post can be made either by direct selection or by transfer of suitable policemen after imparting them training in Wireless Operators' course as prescribed by the Government. The next promotional post from the post of Wireless Operator is the post of Head Wireless Operator and on certain conditions being satisfied the Head Wireless Operator can be promoted to the post of Police Wireless Sub-Inspector (Traffic) Rule 75 which deals with appointment to the post of Wireless Operator and qualifications to be possessed by a candidate is as under:

" 75. Wireless Operators-(1) Appointment to the post of Wireless Operator shall be made either-

- (i) by direct selection, or
- (ii) by transfer of suitable policemen after imparting them training in Wireless Operator's Course prescribed by Government.

(2) To be eligible for appointment by direct selection to the post mentioned in sub-rule (1) a candidate must:

- (a) be not more than 28 years of age,
- (b) have passed Secondary School Certificate examination or equivalent examination.
- (c) possess one of the following technical qualifications, namely:
 - (i) certificate of competency class II as Wireless Operator conducted by Ministry of Communications, Government of India, or
 - (ii) certificate in Wireless telegraphy course conducted by the Department of Technical Education, Gujarat State, or former Bombay State,

or

- (iii) National trades certificate in the trade of Wireless Operators awarded after two years training at the Industrial Trading Institute by Director General of Employment and Training or equivalent, or
- (iv) National apprenticeship certificate in the trade of Wireless Operators awarded by Director General of Employment and Training or equivalent or,
- (v) has gone through the basic Wireless Operator's training in Defence Forces and obtained a proficiency of Class-II of Army Signals or equivalent

Provided that preference may be given to candidates possessing a certificate in Radio Servicing in addition to the above qualifications or experience or both

Provided further that the upper age limit may be relaxed in favour of a candidate possessing exceptionally good qualifications or experience or both:

Provided further that the upper age limit may also be relaxed in case of persons already in service of the State of Gujarat in accordance with the provisions of the Gujarat Civil Services Classification and Recruitment(General) Rules 1967.

- (3) The selected candidate shall be required to undergo special training in the police procedure, equipment etc. for a period of one month. He shall also have to undergo training prescribed under the recruitment course of a policeman, On completion of such training he shall be required to pass the prescribed test in "sending and receiving" wireless message. Any candidate who fails to pass the test shall be liable to be discharged. A constable who fails to pass the test shall be reverted to his original post.
- (4) The selected candidate shall be required to pass an examination in Hindi or Gujarati or both in accordance with the rules prescribed by the Government in that behalf from time to time.

(5) The candidate appointed by transfer or by direct selection shall be on probation for a period of one year.

(6) To be eligible for appointment by selection, a policeman should have passed matriculation or Secondary School Certificate Examination and should have put in atleast two years service.

"76. Radio Mechanics- 50% of the available posts should be filled in by direct recruitment from candidates possessing the minimum qualifications as under the remaining by promotion from lower ranks if qualified i.e. Electricians.

Qualifications for direct recruitment:-

(i) Age- Minimum 22 years
Maximum 35 years

(ii) Education-passed SSC examination plus a Diploma or a certificate in Radio Service awarded by the department of Technical Education or a Diploma in Craftmanship(Radio-Mechanic) or equivalent qualifications."

It may be stated that Gujarat Police Manual also deals with appointment to be made to another post viz. the post of Electrician. Rule 77 which deals with recruitment to be made to the post of Electricians and qualifications which a candidate should possess is a under:

"77 Electricians (Wireless) Recruitment should be made from candidates possessing the following qualifications:

(i) Age- Minimum 22 years
Maximum 35 years.

(ii) Education.- Should have a working knowledge of English besides a Second Class Wireman licence of the Public Works Department. Sound knowledge of maintenance of Small Petrol Engines, Dynamotors, Generators and Batteries and execution of Electrical fittings at Wireless Stations candidates possessing certificate in Radio Servicing or any other equivalent qualifications will be preferred."

One who is holding the post of Electrician can be promoted to the post of Radio Mechanic and a Radio Mechanic can further be promoted to the post of Police Wireless Sub Inspector (Engineering). Rule 124 deals with refresher course to be undergone by Wireless Operator/Radio Mechanic; whereas Rule 176 deals with the Police Wireless Organisation. For the purpose of class pay, Wireless Operators/Radio Mechanics/Electricians are divided into 4 classes viz. Class 4, class 3, Class 2 and Class-1. In order to qualify himself for any of these classes every Wireless Operator/Radio Mechanic/Electrician is required to pass examination prescribed for the class. The whole scheme of passing prescribed examination for different classes of employees is detailed in Rule 176.

#. In exercise of powers conferred by clause (b) of section 5 of Bombay Police Act 1951, Government of Gujarat has made Rules called " The Gujarat Police Department Conditions of Service relating to Wireless Operators and Head Wireless Operators Examination) Rules 1982. Rule 2 of the rules defines certain phrases; whereas Rule 3 requires that every person who is appointed as Wireless Operator prior to the appointed date has to pass Wireless Operators' examination within the period of 3 years from the date of his regular appointment as Wireless Operator and every person who is appointed as Wireless Operator on or after the appointed date, is required to pass Wireless Operators examination within a period of 3 years from the date of his regular appointment as Wireless operator. Rule 4 of the Rules further provides that in order to be eligible for promotion to the post of Head Wireless Operator, a Wireless Operator recruited prior to the appointed date has to pass Head Wireless Operators' examination within six years from the date of his appointment as Wireless Operator or three years from the appointed date which ever is less unless he has passed the examination under the old rules or has been exempted from passing the Head Wireless Operators' examination. Sub rule 2 of Rule 4 inter alia provides that in order to be eligible for promotion to the post of Head Wireless Operator, Wireless Operator who has been recruited on or after the appointed date has to pass Head Wireless Operators' examination within a period of 6 years from the date of his appointment as Wireless Operator. Rule 6.1 stipulates that the Wireless Operator who fails to pass the examination within the specified period or specified chances after the expiry of the specified period and specified chances would be liable to have his increment

withheld until he passes the examination. According to Rule 6.2 any increment withheld under sub-rule 1 shall become payable to him from the date on which he passes the relevant examination and all future increments shall accrue to him as if no increment had been withheld, but those Wireless Operators who have lost the increment by reason of increment having been withheld are not entitled to claim arrears of pay. Rule 11 of the Rules provide that the syllabus for the Wireless Operators' examination shall be as specified in Schedule A and the Syllabus for Head Wireless Operators' Examination shall be as specified in Schedule-B.

#. According to the petitioners though the post of Radio Mechanic carries the same pay as that of Head Wireless Operator and though the post of Electrician and the post of Wireless Operator carries the same pay, no examination is prescribed for the purpose of promotion from the post of electrician to the post of Radio Mechanic and therefore the requirement that Wireless Operator should pass the qualifying examination for earning promotion to the post of Head Wireless Operator being *ultravires* to the provisions of Article 14 of the Constitution should be struck down. The petitioners have averred that the Wireless Operator not only undergoes training limited to wireless but also undergoes the training regarding radio mechanic and as the course of Wireless Operator is a comprehensive course there is no reason why the Wireless Operator should not be promoted to the post of Radio Mechanic without the requirement of passing any examination. What is pleaded by the petitioners is that there are about 88 promotional posts of Radio Mechanics available to 89 Electricians; whereas there are 148 promotional posts of Wireless Operators which are available to Wireless Operators and as the new rules minimise the chances of promotion of the petitioners to the post of Head Wireless Operator, the same should be held to be bad in law. The petitioners have further averred that no rule laying down quota for each division to be eligible for the purpose of promotion to the post of Police Inspector is laid down and therefore, appropriate directions should be given to the respondents to frame rules stipulating quota for promotion to post of Police Wireless Inspector and PSI(Wireless) in accordance with the strength of different cadres. The grievance made by the petitioners is that right of promotion of the petitioners has been adversely affected by the new rules and therefore, they should be held to be *ultravires*. Under the circumstances, the petitioners have filed the present petition and claimed reliefs to which reference

is made earlier.

#. This petition was admitted on June 28, 1983 and by way of interim relief it was directed that the promotions to the post of Head Wireless Operators shall be subject to the result of the petition.

#. The ground of challenge to the rules which have been referred to earlier were urged by the learned advocate for the petitioners and therefore, it is not necessary to reproduce them again here. Ms. Manisha Lavkumar Shah learned AGP submitted that qualifications for the post of Wireless Operators and Electricians are different and therefore, the petitioners are not justified in claiming the reliefs mentioned in the petition on the ground that post of Wireless Operator is equivalent to that of Electrician. According to her the State Government has the power to frame Rules for regulating the conditions of service of persons recruited as Wireless Operators in the police department in view of the provisions of clause (b) of Section 5 of Bombay Police Act 1951 and therefore, the rules cannot be regarded as illegal. What was emphasised on behalf of the respondents was that the duties and responsibilities of Wireless Operators are more onerous in comparison to the duties of Electricians and therefore, the statutory provision requiring a Wireless Operator to pass qualifying examination to earn promotion to the post of Head Wireless Operator is legal. It was also argued that all the Wireless Operators are treated equally and requirement that the Wireless Operators should pass qualifying examination to earn promotion to the post of Head Wireless Operator being legal the petition should be dismissed.

#. I have heard the learned advocates for the parties. Section 5(b) of the Bombay Police Act 1951 provides that subject to the provisions of the Act recruitment pay allowances and all other conditions of service of the police force shall be such as may from time to time be determined by the State Government by general or special order. In exercise of powers conferred by clause (b) of section 5 of the Bombay Police Act 1951 the Government has made Rules. The object of the examination which is directed to be held is to assess the competence, aptitude and antecedents of the Wireless Operators. A Wireless Operator before he can be promoted to the post of Head Wireless Operator has to pass the examination and the examination is to be conducted to adjudge the suitability of a candidate. Rule 75 of Gujarat Police Manual provides that to be eligible for appointment by direct selection to the post of Wireless Operator a candidate

must have passed SSC and possess one of the following technical qualifications;

- i. certificate of competency class II as Wireless Operator conducted by Ministry of Communications, Government of India, or
- ii. certificate in Wireless telegraphy course conducted by the Department of Technical Education, Gujarat State or former Bombay State, or
- iii. National trades certificate in the trade of Wireless Operators awarded after two years training at the Industrial Training Institute by Director General of Employment and Training or equivalent or
- iv. National apprenticeship certificate in the trade of Wireless Operators awarded by Director General of Employment and Training or equivalent or has gone through the basic Wireless Operator's training in Defence Forces and obtained a proficiency of class II of Army Signals or equivalent.

As far as Electrician is concerned Rule 77 stipulates that before a candidate can be appointed to the post of Electrician he should have (a) working knowledge of English besides a Second Class Wireman licence of the Public Works Department and (b) sound knowledge of maintenance of Small Petrol Engines, Dynamotors Generators and Batteries . Therefore, the eligibility of a candidate for being appointed to the post of Wireless Operator and that of the Electrician are quite different. In the circumstances the petitioners are not entitled to make a grievance that Electrician has not to pass any qualifying examination for promotion to the post of Radio Mechanic and the Rule stipulating that a Wireless Operator can be promoted to the post of Head Wireless Operator on passing the qualifying examination is bad in law. The fact that there are about 88 promotional posts of Radio Mechanics available to 89 Electricians; whereas less number of posts are available for promotion to Head Wireless Operators cannot be taken into consideration while adjudging validity of these statutory Rules. It may be noted that the Rules in question are being uniformly applied to all the Wireless Operators. The provision made in Rule 6.1 that a Wireless Operator who fails to pass the relevant examination within the specified period and specified chances shall be liable to

have his increment withheld until he passes the examination cannot be termed as either unreasonable or arbitrary. As is evident, the new Rules have been brought into force in order to adjudge the suitability of Wireless Operators who have to perform responsible and accountable duties on the promotional post of Head Wireless Operator. The syllabus prescribed for the Wireless Operators' examination as well as the syllabus for the Head Wireless Operators' examination cannot be regarded as having no nexus to the duties to be performed by the Wireless Operator or by the Head Wireless Operators as the case may be. Which syllabus should be prescribed for the post in question is a policy matter to be determined by the competent authority having regard to the duties and responsibilities to be performed by the incumbents. In such matters the court cannot sit in appeal and the Court is least equipped to determine such questions. The provisions of Art. 14 or Art.16 do not exclude the laying down of selective test nor do they preclude the Government from laying the qualifications for promotional post in question. The State which encounters diverse problems arising from variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing the best services for being eligible for promotion in its different departments. In the present case, the object which is sought to be achieved by the provisions reproduced earlier is the requisite efficiency in the cadre of Head Wireless Operator. The Government is the proper judge of its requirement. The Wireless Operator and Electricians in my opinion clearly constitute different classes and this classification is sustainable on intelligible differentia which has a reasonable connection with the object of efficiency sought to be achieved. Promotion to Head Wireless Operator is guided by merit cum seniority. It is therefore, difficult to find fault with the provision which places in one group all these Wireless Operators who have to qualify for promotion by passing the requisite examination. Reasonable promotional opportunity is made available to Wireless Operators. On over all view of the matter I am satisfied that no ground is made out by the petitioners to claim declaration that the Rules framed by the Government in exercise of the powers conferred by clause (b) of Section 5 of the Bombay Police Act 1951 are in any manner illegal or offend the provisions of either Articles 14 or 16 of the Constitution. Under the circumstances the petition cannot be allowed and the same is liable to be dismissed.

##. For the foregoing reasons the petition fails and is

dismissed. Rule is discharged. No order as to costs.

(J.M.Panchal.J)

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